



UNITED STATES DEPARTMENT OF COMMERCE
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J 5634-004

EXAMINER

CAIN, D

ART UNIT

PAPER NUMBER

222

DATE MAILED:

03/22/91

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on _____ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice re Patent Drawing, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, Form PTO-152
5. Information on How to Effect Drawing Changes, PTO-1474.
6. _____

Part II SUMMARY OF ACTION

1. Claims 1-26 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 1-26 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).

12. Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has been received not been received been filed in parent application; serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

EXAMINER'S ACTION

(Rev. 9-89)

Art Unit 222

1. Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the prior invention as set forth in claims 1-25 of U.S. Patent No.

4,965,825. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the features of the present claims are found in the claims of the patent.

2. The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of monopoly by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner David Cain whose telephone number is (703) 308-0463. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0766.

3/21/91



THOMAS H. TARCZA
SUPERVISORY PRIMARY EXAMINER
GROUP ART UNIT 222